REMARKS

Claims 1-11 are pending in the application. Claims 1, 2, 4 and 10 are amended as noted above. New claims 12-20 are presented. These amendments and new claims do not introduce new matter, and are supported by the present application. For example, descriptions of using the computer to perform operations on data and using computer-based estimating models is found at least at pages 6 and 7. Descriptions of the reinsurer risk factor are found at least at pages 8, 9 and Table 2 with the associated description. Description of payment of the guaranteed fixed dividend or payment rates when the insured claims matures is found at least on pages 9 and 16.

1. Prior Rejections and Objections Under 35 USC §§ 112 and 132

The examiner is thanked for withdrawing the rejections and objections of claims 1-11 under 35 USC §§ 112 and 132, respectively. The above amendments were made with consideration of these prior rejections. As noted above, the amendments and new claims are supported by the originally filed application, including U.S. Patent No. 5,613,072, which was incorporated by reference into the present application.

2. Claim Rejections Under 35 USC § 101

In the Office Action, all claims 1-11 were rejected under 35 USC § 101 as being directed to non-statutory subject matter. It was noted that the claims provide a useful, concrete and tangible result, but fail to limit the invention to within the "technological

arts." It was noted that the recitation of merely storing data to be read or outputted by a computer without any functional relationship does not impart functionality to the computer rendering it non-functional descriptive material per se.

Applicants submit that the above amendments overcome this rejection. Independent claims 1, 4 and 11 have now been amended to include specific steps that recite use of a computer on operating on the recited data. In particular, in claim 1, the steps of estimating and calculating are recited as performed by the computer. In claim 4, the steps of estimating and determining are recited as performed by the computer. In claim 10, the steps of generating, applying, estimating and calculating are recited as performed by the computer. Thus, the claims now comport with the standard set forth in the office action, namely, involving and requiring the use of technology in performing functions on data and not merely storing and outputting data from a computer. Therefore, applicants submit that the present claims are not directed to non-statutory subject matter as defined in the Office Action, and the rejection should be withdrawn.

3. Claim Rejections Under 35 USC § 103

A. Claims 1-9

Claims 1-9 were rejected under 35 USC § 103(a) as being obvious over King et al., US 5,704,045 (hereinafter King), in view of Schwab, S., "The International Journal of Insurance Law 1997," 4:28-39, 175-178 (hereinafter Schwab), and further in view of "Insurance Law of the Peoples Republic of China" (hereinafter ILPRC). The rejection is overcome by the present amendments for the reasons noted below.

Claims 1-3

Present claim 1 recites that the fixed dividend is based on among other things a reinsurer risk factor. The Examiner cited Schwab for teaching "guaranteeing payment of a fixed dividend or payment to claimants." However, Schwab fails to teach or suggest to one of skill in the art that the payment is based on or adjusted by a reinsurer risk factor. Indeed, Schwab teaches away from this by describing that contingent claims are estimated and allowed by the Liquidator in order to immediately obtain recovery to reinsurers' obligations to add to the bankrupt insurance company's estate prior to payment on the contingent claims. There is no disclosure of a reinsurer risk factor, and clearly none is suggested since the reinsurers' obligations become due immediately and are not held open indefinitely until a contingent claim matures as under the scenarios described in the present application.

Moreover, Schwab taken in combination with King and ILPRC do not suggest the use of a reinsurer risk factor. ILPRC merely refers to paying out claims against a bankrupt insurance company at a percentage of the claim, which one of skill in the art would understand is based on equitable distribution of the available assets to present claims against the insurance company. There is no suggestion of looking towards reinsurer obligations for contingent claims, let alone applying a reinsurer risk factor that the reinsurer will be unable to make good on its obligations at a future point in time when the contingent claims are mature and allowed as recited in claim 1. Accordingly, present claim 1 is not fairly suggested by the combination of the cited references, and the rejection should be withdrawn..

Applicants submit that Claim 1 is also not obvious over the cited references for the reasons submitted in applicants' last response, and wishes to emphasize certain points to respond to the last Office Action. With regard to claim 1, paragraph (d) [formerly paragraph (c)], it is asserted in the Office Action that King at columns 7 and 8 discloses that the insolvent Insurance Company's reinsurers' obligations associated with liabilities are received. However, applicants assert that King discloses no specific teachings. The cited portions of King discuss the transfer of "reserved assets to [fiduciary] custodians, and ascertaining that such assets shall be held apart from the assets of each custodian and other parties." (col. 8, ln. 37). In that cited portion of King, there is no discussion of transferring reinsurers' obligations, which are not reserved assets. Indeed, King teaches away from the present invention of claim 1, and in particular transferring reinsurers' obligations as recited by claim 1, by noting that the invention of King requires a modification of laws to "further prohibit a liquidator from changing the terms of any contract or agreement or segregated assets allocated to reserves." (col. 8, lns. 17-19).

Applicants remarks were discredited for relying on the above citation, but it is not merely these two lines that teach away from the applicants' invention. For example, within the passage cited in the Office Action, King also states "prohibiting except under defined circumstances transfers between reserved and general assets," and "prohibiting any change to or use of the segregated assets for any purpose, other than that for which the assets were segregated, by a liquidator or any other party in the event of a liquidation or bankruptcy of the insurer-entity." (col. 7, lns 32-40).

In contrast to Schwab, the present application describes that the claimed method abolishes any prior segregation of reserved assets by transferring them to an indemnifying agent (i.e., private liquidator) in exchange for guaranteeing a payment of a fixed dividend to claimants in a future time when the claims mature. In other words, according to claim 1, the bankrupt insurance company's reserved assets and all other assets or portions thereof including reinsurers' obligations are transferred. The transferred assets may be pooled or aggregated with the assets of the indemnifying party to whom they are transferred. This action is expressly stated to be prohibited by King since it no longer maintains the specific segregation and matching of asset reserves with specific policies. For this additional reason, Claim 1 is patentable over the cited references.

In addition, with regard the Examiner's remarks as to claim 1, paragraph (c) [formerly paragraph (b)], in the Office Action it is asserted that Schwab teaches guaranteeing the payment of a fixed dividend. However, Applicants assert that Schwab discloses no such teachings. Indeed, Schwab does not disclose that the dividend payment is "fixed" and does not disclose that the dividend is "guaranteed." At most, at page 176, Schwab states that a liquidator may, under a final dividend plan, "allow" contingent claims at their net present value to "participate" in the plan so the liquidator may immediately recover the reinsurers' obligations based on an actuarial estimation of those "contingent" claims. Schwab does not disclose whether the allowed contingent claims receive a "fixed dividend" or even how the logistics are handled to provide for how much those future claimants may receive. Schwab very much suggests that

contingent claimants receive a payment based on their estimated claim value rather than a fixed dividend based on the actual claim amount when it matures as in the applicants' method (see page 9 of present application – claim paid as a percentage of the NOD, which is made when a mature claim is no longer contingent). This procedure in Schwab appears mainly as a device to allow the Liquidator to obtain the reinsurance recoverables prior to the actual value of the "contingent" claims becoming known, and then paying only against the estimated value of the claim, rather than an NOD liquidated amount. Even at that, there is no "guarantee" that those "allowed" contingent claims would receive any dividend as Schwab noted that the Court still "allows reinsurers, and others, to contest whether a claim is subject to estimation and the value of a claim." (page 176, lns. 42-44). For this additional reason, Claim 1 is patentable over the cited references.

Moreover, applicants submit that one of ordinary skill in the art would not find suggestion or teaching in King, Schwab or ILPRC or within the state of the art to modify these references in combination to obtain the invention as recited in Claim 1. Each of King and Schwab teach away from the invention as noted above. ILPRC merely provides statutory guidelines with laudatory goals that do not provide any specific teaching other than what is noted in the Office Action. None of these references teach the advantages associate with the present invention.

As noted in the application at page 4, the present invention has the following advantages:

> These methods have the following advantages: they guarantee claimants a prompt dollar certain payment on allowed claims that may

> substantially exceed, on a present value basis, the amount received under the currently used system of insurance company liquidation; and they transfer the risk and uncertainty regarding the amount of future loss development and uncollectible assets to the Indemnifying Agent. The methods also potentially reduce litigation over liquidation orders in a way that would be endorsed both by claimants and Insurance Companies alike. The methods also permit the orderly collection of the assets of the insolvent Insurance Company (which often consists of reinsurance which is due to be paid solely at the time the amount of the loss is determined in an NOD). Finally, the methods shift the risks of any future inefficient and inadequate estate administration to a new Deputy Liquidator.

Indeed, the motivations stemming from Schwab as noted in the Office Action would teach away from the present invention, and the advantages noted in the application. In particular, under the present invention, there is no abbreviation in paying claimants. Because of the time value of money, the receipt of the assets and reinsurers' obligations in present combined with the delayed obligation to pay future claimants in the future, allow for the Indemnifying Agent to guarantee a fixed dividend to claimants because it has the time to grow the assets in other investment vehicles until the point later in time when the claims mature. Thus, the risks of the shortall in asset value covering the mature claims is transferred from the claimant as under the Schwab plan, to the Indemnifying Agent, as under the present invention. Indeed the present claim 1 recites that a reinsurer risk factor is applied to the fixed dividend determination to account for the reinsurer failing to make good on its obligations when the claims mature, that risk being borne by the Indemnifying agent. Thus, the motivations in Schwab to wind down the estate and cut off claims to minimize administrative expenses are contrary to achieving the present invention, which relies on the potential of greater returns on the insolvent Insurance Company's assets when transferred to the

Indemnifying Agent and the concomitant postponing payment of claims out of those assets until the claims mature. For this additional reason, the invention as recited in claim 1 is patentable over the combination of King, Schwab and ILPRC.

For all the above reasons, the rejection against independent claim 1 and dependent claims 2-3 should be withdrawn.

Claims 4-9

Like Claim 1, independent claim 4 has been amended to recite that the reinsurer obligations are evaluated by applying a reinsurer risk factor. For the same reasons as noted above neither Schwab nor ILPRC teach or suggest applying a reinsurer risk factor when evaluating reinsurers' obligations. Neither would the use of such risk factor be suggested by the combination of cited references since none of them involve transferring the risk of the failure of a reinsurer onto a third-party payor. Rather, in the prior art, all risks of the reinsurer failing to meet their future obligations are borne by the insurance claimants.

In addition, claim 4 recites that the guaranteed payments are made on the claims when the claims mature. Schwab teaches making payments based on estimated values of the claims. The reinsurer risk factor is applied to account for the risks associated with the delay in the contingent claims being certain. The cited references do not involve such a risk transfer mechanism and applicants submit that it would not be obvious to one skilled in the art in modify the references to obtain the claimed invention since allowing the long run-off of the bankrupt insurance company in combination with

the risk and asset transfer runs counter to the teachings of the prior art. Accordingly, for this reason and the reasons noted above with regard to Claim 1, Claim 4 is not obvious over the cited art. Thus, the rejection against independent claim 4 and dependent claims 5-9 should be withdrawn.

B. Claim 10-11

Claims 10-11 were rejected under 35 USC § 103(a) as being obvious over Hammond et al., US 5,712,984 (hereinafter Hammond) in view of King et al., US 5,704,045 (hereinafter King). The rejection is traversed for the reasons noted below.

Claim 10

Like Claim 1, independent claim 10 has been amended to recite that the reinsurers' obligations are calculated by applying a reinsurer risk factor. For the same reasons as noted above neither King nor Hammond teach or suggest applying a reinsurer risk factor when determining reinsurers' obligations. Neither would the use of such risk factor be suggested by the combination of cited references since none of them involve transferring the risk of the failure of a reinsurer onto a third-party payor. Rather, in the cited prior art, all risks of the reinsurer failing to meet their future obligations are borne by the insured claimants. King thus fails to suggest applying the reinsurer risk factor when determining a present value of the reinsurers' obligations, and fails to suggest guaranteeing payment of a fixed dividend when the insured claims mature. Neither would one of ordinary skill in the art modify King to apply such a risk factor given

that King does not involve the concept of transferring risk from the claimant to a third-party.

Applicants admit that Hammond teaches determining the present value of the underlying claims, but fails to fill in the other gaps noted above for King. Therefore, Applicants submit that independent Claim 10 and dependent claim 11 are patentable over the cited references for the above reasons.

4. New Claims 12-20

Applicants present new claims 12-20, which are directed to further details on the application of the reinsurer risk factor in calculating the guaranteed fixed dividend or payment rate. Applicants submit that the cited prior art in combination with the knowledge of one of ordinary skill in the art fails to teach or suggest such computer-implemented methods for calculating at present guaranteed payment rates to be made on unknown insured claims at a future time when the claims mature.

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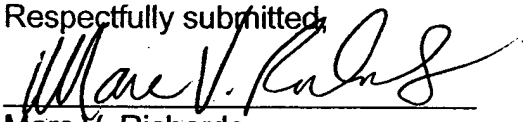
5. Conclusion

Applicants respectfully submit that the rejections have been overcome in view of the amendments and above remarks, and that the present claims are in condition for allowance. The Examiner is kindly requested to phone the undersigned to clarify any remaining issues to expedite allowance.

Respectfully submitted,



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